FILED JUNE 29, 2009

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **DAVID DEAN MANGAR** **Member No. 172628** A Member of the State Bar.	)	Case No.: **05-C-01829-LMA** **DECISION**

I. INTRODUCTION

In this default conviction referral matter, respondent, David Dean Mangar, was convicted of one count of trespass, Penal Code section 602(m). After considering the evidence and the law, the court recommends, among other things, that respondent be actually suspended for six months and until he complies with rule 205, Rules Proc. of State Bar.

II. SIGNIFICANT PROCEDURAL HISTORY

On June 8, 2007, the Review Department of the State Bar Court issued an order referring this matter to the Hearing Department, in relevant part, for a hearing and decision as to whether the facts and circumstances surrounding respondent's offense involved moral turpitude or other misconduct warranting discipline.

On August 15, 2007, the Review Department issued an order augmenting the reference to the Hearing Department to include a hearing and decision recommending the discipline to be imposed if the Hearing Department found that the facts and circumstances surrounding

respondent's criminal offense involved moral turpitude or other misconduct warranting discipline.

On June 13, 2007, the State Bar Court issued and properly served a notice of hearing on conviction on respondent. Respondent, through his then-counsel, Robert N. Burmeister, Jr.,[1] filed a response on August 10, 2007. (Rules Proc. of State Bar, rule 601.)

Respondent participated in status conferences and settlement conferences during the proceedings except for those held on October 29, 2007 and March 2, 2009. He had properly been given notice of those two appearances.

The order memorializing the March 2, 2009 pretrial conference noted that respondent did not participate and that he did not submit his pretrial statement or exhibits. It also stated that the court would rule on March 6, 2009 on the State Bar's motion to preclude respondent's witnesses and exhibits at trial. It was properly served on respondent.

Respondent did not appear for trial on March 6, 2009 although he had been given proper notice of this date during his participation at status conferences held on August 25, September 29, October 27, December 1, 2008, January 5 and February 11,[2] 2009 and by orders properly served on him memorializing the conferences. The case proceeded by default. The exhibits offered by the State Bar at the hearing were admitted into evidence. An order memorializing this event was properly served on respondent.

On March 12, 2009, the court entered respondent's default and enrolled him inactive pursuant to Business and Professions Code, section 6007, subdivision (e), effective on March 15, 2009. The order was properly served on him at his official address on that same date by certified mail, return receipt requested. The signed return receipt (signature illegible) indicated delivery

[1] Respondent substituted himself as counsel in place of Burmeister on October 11, 2007.

[2] At this status conference and the order memorializing it, the trial dates were reduced from March 3 through 6, 2009, to March 6, 2009 only.

on March 14, 2009.

The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

The matter was submitted for decision on April 6, 2009.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent is conclusively presumed, by the record of his conviction in this proceeding, to have committed all of the elements of the crime of which he was convicted. (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097; *In re Duggan* (1976) 17 Cal.3d 416, 423; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 8, 1994, and has been a member of the State Bar at all times since.

B. Conviction

On May 14, 2007, in the San Mateo County Superior Court, respondent pleaded *nolo contendere* to and was convicted of one count of violating Pen. Code, §602, subd. (m) (entering and occupying real property or structures of any kind without the consent of the owner), a misdemeanor. (San Mateo County Superior Court case no. NM346522.) He was sentenced to one year of court probation and served two days in county jail in lieu of paying a fine. He also was ordered to pay restitution and certain fees.

On January 20, 2005, respondent was on the premises of Lincoln Elementary School in Burlingame, California, peering into an empty classroom. A teacher and, later, the school principal saw him and asked him several times if they could help him, but he did not answer.

Before walking away, he said that he was looking for a prism. After observing him leave the school premises, the principal called the police.

When the police arrived, respondent was sitting in his Porsche. As he was approached, he started his car and pulled away, but an officer blocked his departure. When asked his name, respondent handed the officer an insurance card bearing his father's name. Respondent admitted being on the school grounds and stated that he had asked for a prism. He also told the officer that there was no law barring him from school. He then told the police that he needed to "go to the hospital to get this itch checked out" on his leg. When respondent was asked to exit his car and was searched for weapons, the officer found a canister of pepper spray on him. Respondent was arrested.

After the arrest, respondent informed the police that he was an attorney and that his case would be forwarded to Britain for prosecution. When asked if he wanted to call anyone, he asked that President Bush and former Secretary Tom Ridge be notified of his actions.

Respondent was released on his own recognizance, promising to appear in court on March 1, 2005. He did not appear on that date and the court issued a bench warrant.

Respondent was arrested on March 9, 2005. While being processed after this arrest, a deputy sheriff found crystal methamphetamine on his person.[3]

During the criminal proceedings, the court found doubt regarding respondent's competency; referred him to medical professionals; and suspended the proceedings. He was found to be competent and the criminal proceedings continued and, ultimately, resolved. (See, i.e., Reporter's Transcript of Proceedings, March 30, 2006 (Exhibit 6), pp. 37 – 43; Criminal Case Docket re San Mateo County Superior Court case no. NM346522A (attached to Transmittal of Records of Conviction of Attorney, filed June 6, 2007), entries for June 19, August 21 and

[3] This matter was later dismissed after respondent successfully completed a diversion program.

October 10, 2006 (Docket, pp. 17, 18); March 21, 2007 (Docket, p. 23).)

C. Conclusions of Law

In light of the foregoing facts, the issue before the court is whether the facts and circumstances surrounding respondent's conviction involved moral turpitude or other misconduct warranting discipline.

The term moral turpitude is defined broadly. (*Baker v. State Bar* (1989) 49 Cal.3d 804, 49 Cal.3d 804, 815, fn. 3.) An act of moral turpitude is any "act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. [Citation.]" (*In re Craig* (1938) 12 Cal.2d 93, 97.) "Although an evil intent is not necessary for moral turpitude [citations], some level of guilty knowledge or [moral culpability] is required. [Citation.]" (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 384.)

Respondent's conduct does not demonstrate baseness, vileness and depravity constituting moral turpitude. Trespass does not inherently involve moral turpitude. Moreover, there is no nexus between his offense and the practice of law. Accordingly, based on clear and convincing evidence, the court concludes that the facts and circumstances surrounding respondent's trespassing conviction does not involve moral turpitude, but does constitute other misconduct warranting discipline.

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof.

Misconduct[4], std. 1.2(b).)

Respondent has one prior instance of discipline. (Std. 1.2(b)(i).) In order no. S115357 (State Bar Court case no. 00-O-15476), filed July 18, 2003, the Supreme Court imposed discipline consisting of one year's stayed suspension and one year's probation on conditions, including 120 days of actual suspension. Respondent stipulated to culpability for violation of rules 4-100(A) (two counts); 4-100(B)(4) (one count) and 3-310(B)(3) of the Rules of Professional Conduct. Trust account violations were the aggravating factor. In mitigation, the court considered the absence of a prior disciplinary record and respondent's candor and cooperation.

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).)

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors.

C. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.)

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[4].Future references to standard or std. are to this source.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) However, the standards are not mandatory; they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 3.4 provides that the final conviction of a member of a crime which does not involve moral turpitude but which does involve other misconduct warranting discipline shall result in a sanction as prescribed in Part B of the standards that is appropriate to the nature and extent of the misconduct found to have been committed by the member. (*In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108, 118; *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510.)

Section 6068, subdivision (a) requires an attorney to support the Constitution and laws of the United States and of this State. By engaging in a criminal act, respondent did not support federal or California law. Standard 2.6 in Part B of the standards, therefore, seems to be appropriate to the nature and extent of respondent's misconduct. In relevant part, it recommends suspension or disbarment for violations of sections 6067 and 6068, depending on the gravity of the offense or harm, if any to the victim, with due regard to the purposes of imposing discipline.

Respondent's offense does not inherently involve moral turpitude or disrespect for the law. It does not involve violent or dangerous criminal behavior. There is no nexus between his offense and clients or the practice of law. However, respondent's misconduct and lack of participation in this matter raises concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. No explanation has been offered that might persuade the court otherwise and the court can glean none. Having considered the

evidence and the law, including his prior 120-day actual suspension, the court the court believes that a six-month actual suspension to remain in effect until he complies with rule 205, Rules Proc. of State Bar, among other things, is adequate to protect the public and proportionate to the misconduct found and the court so recommends.

V. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent David Dean Mangar, State Bar Number 172628, be suspended from the practice of law in California for three years, execution of that period of suspension to be stayed subject to the following conditions:

1. David Dean Mangar is suspended from the practice of law for a minimum of six months, and he will remain suspended until the following requirements are satisfied:
    i. The State Bar Court grants a motion to terminate his suspension pursuant to rule 205 of the Rules of Procedure of the State Bar. David Dean Mangar must comply with the conditions of probation, if any, imposed by the State Bar Court as a condition for terminating his suspension.
    ii. If he remains suspended for two years or more as a result of not satisfying the preceding condition, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. David Dean Mangar must comply with the conditions of probation, if any, imposed by the State Bar Court as a condition for terminating his suspension.

The court also recommends that David Dean Mangar be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and

40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.[5] Failure to do so may result in disbarment or suspension.

It is further recommended that David Dean Mangar be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners and provide proof of passage to the Office of Probation within one year after the effective date of the Supreme Court's order, or during the period of his actual suspension, whichever is longer. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VI. COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: July _____, 2009

LUCY ARMENDARIZ
Judge of the State Bar Court

[5] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)